

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for
Termination of Probation of:**

WON HYOK BAE, M.D.

Case No. 8002013002068

**Physician's and Surgeon's
Certificate No. G 83362**

Petitioner

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1 – Case Number will be corrected to read “8002013002068”.
2. Page 1, Paragraph 1, June 19, 1996 will be corrected to read “September 5, 1996”.

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 31, 2014.

IT IS SO ORDERED October 2, 2014.

MEDICAL BOARD OF CALIFORNIA

By: _____

**Barbara Yaroslavsky, Chair
Panel A**

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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Petition for Termination
of Probation of:

WON HYOK BAE, M.D.

Physician's and Surgeon's Certificate
Number G 83362,

Petitioner.

Case No. 800-2014-002068

OAH No. 2014060569

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on August 25, 2014, at Los Angeles, California.

Claudia Ramirez, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Won Hyok Bae, M.D. (Petitioner), represented himself.

Evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FACTUAL FINDINGS

1. On June 19, 1996, the Board issued Physician's and Surgeon's Certificate Number G 83362 to Petitioner. The certificate is due to expire on September 30, 2016.

2. By its Decision effective December 9, 2011, made pursuant to a stipulation in case number 17-2010-205819 (stipulation), the Board revoked the certificate, stayed the revocation, and placed Petitioner on probation under terms and conditions, including biological fluid testing, for a period of three years. By this action Petitioner seeks to terminate his probation.

3. In the stipulation, Petitioner admitted each and every charge in the accusation filed in case number 17-2010-205819. Accordingly, the following bases for license discipline were established:

First Alcohol-related Conviction

a. On or about March 19, 2008, in the Superior Court of the State of California, for the, County of Los Angeles case number 8MP02037, entitled *People vs. Won H. Bae*, Petitioner was convicted, upon his plea of nolo contendere, of “exhibition of speed,” a violation of Vehicle Code section 23109, subdivision (c). This conviction was a result of a plea-bargain, where the originally charged violations of Vehicle Code section 23152, subdivisions (a) and (b), which relate to driving under the influence of alcohol and drugs, and driving with blood alcohol level in excess of 0.08 percent, were dismissed.

b. Petitioner was sentenced to summary probation for a period of 36 months and fined a total of \$1,103. The conditions of Petitioner's probation, which was to expire in March 2011, included a prohibition on his driving a motor vehicle with any measurable amount of alcohol in his system,

c. The circumstances surrounding Petitioner's conviction are as follows: On December 5, 2007, at approximately 12:51 a.m., Petitioner was driving his vehicle in the number five north-bound lane of the 101 freeway in Los Angeles. A California Highway Patrol officer who was driving behind Petitioner observed Petitioner's vehicle drift into the number six lane, then abruptly jerk to the left and enter the number four lane. Suspecting that the driver was impaired, the CHP officer initiated a stop, and spoke to Petitioner. After Petitioner admitted to having had two glasses of wine and after having failed various field sobriety tests, Petitioner was arrested for driving under the influence of alcohol or drugs. Petitioner was transported to a CHP office where he completed a breath test which showed that his blood alcohol level at the time of the test was 0.09 percent.

Second Alcohol-related Conviction

d. On or about August 10, 2010, in the Superior Court of California, for the County of Los Angeles case number OMP03896, entitled *People vs. Won H. Bae*, Petitioner was convicted, upon his plea of nolo contendere, of “reckless driving,” a violation of Vehicle Code section 23103. This conviction, which occurred during his probation for the first criminal conviction, was a result of a plea-bargain where the originally charged violations of Vehicle Code section 23152, subdivisions (a) and (b) were dismissed.

e. Petitioner was sentenced to summary probation for a period of 36 months and fined a total of \$1,361. The conditions of Petitioner's second probation included a prohibition on his driving a motor vehicle with any measurable amount of alcohol in his system, enrolling in a nine-month alcohol program and performing 240 hours of community service and attending 19 Alcoholics Anonymous meetings.

f. Upon stipulation, Petitioner was found to be in violation of his 2008 criminal probation in case number 8MP02037. That probation was revoked and Petitioner was ordered to perform 20 days of community service for CalTrans.

g. The circumstances surrounding Petitioner's conviction and violation of probation are as follows: On or about March 18, 2010, at approximately 1:20 a.m., Petitioner was driving his vehicle at approximately 80 miles per hour in the number three north-bound lane of the 101 freeway, south of Gower Street in Los Angeles. Petitioner's vehicle was observed by CHP officers, who ordered the vehicle to exit the freeway and stop. The CHP officer approached Petitioner and detected a smell of an alcoholic beverage on Petitioner's breath. After Petitioner admitted to having recently consumed alcohol, and after he failed field sobriety tests, Petitioner was arrested for driving under the influence. Petitioner was transported to a CHP office where he completed a breath test which showed that his blood alcohol level at the time of the test was 0.09 percent.

4. At the hearing of this matter, Petitioner testified at great length about his poor health. He seemed to suggest that his extensive thyroid problems, coupled with stress, led to his abuse of alcohol resulting in the above convictions. This testimony mirrored the statements Petitioner made in his December 9, 2013 letter to the Board in support of the Petition. Petitioner also testified in detail about the problems he is currently having with a torn retina and how that could significantly impact his practice as a board-certified plastic surgeon. He did not, however, offer any evidence as to why the Board should terminate his probation. The Administrative Law Judge advised Petitioner that, as his probation was due to expire on December 9, 2014, there was a high probability that his probation would end before there was a final decision in this matter.¹ Petitioner stated that he filed the instant Petition "only because [he] could do so."² He wanted "the comfort" of knowing that the Board agreed that his probation should be shortened.

5. Petitioner has been compliant with the terms of his Board-probation. Over the past three years he has had two minor violations (one late quarterly report and one late payment) which were the result of misunderstandings and not any intention on Petitioner's part to violate probation.³ Petitioner is married with two children. He no longer consumes

¹ Under the Administrative Procedure Act, specifically sections 11517 and 11519, the Administrative Law Judge has 30 days from submission of the matter to prepare a Proposed Decision. The Board then has 100 days to adopt, reject or modify the Proposed Decision. In the event the Board adopted the Proposed Decision, the Final Decision would not become effective until 30 days after the adoption. Thus, there is a distinct possibility there would not be an effective Final Decision in this matter until the first week in February 2015.

² Under Business and Professions Code section 2307, subdivision 1(b)(2), a licensee may file a Petition for Penalty Relief after having completed two years of probation.

alcohol nor does he have any desire to drink again. He volunteered to continue with the drug testing condition of his probation even if his Petition is granted. Petitioner has no other disciplinary history nor was there any evidence that he had ever been convicted for any crime other than those discussed above. He was highly respectful of the Board and these proceedings.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307 provides, in part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

³ As an example, Petitioner did not file his first quarterly report until April 2011. He should have filed the first report in January 2011, but he did not realize that he had to file a quarterly report for the period December 9 through December 31, 2011, as the “quarter” was only three weeks long.

(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

2. California Code of Regulations, title 16 (Regulation), section 1360.2 provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

Regulation section 1360.1, subdivisions (b), (d) and (e) referenced above provide:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:

¶ . . . ¶

(b) The total criminal record.

¶ . . . ¶

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

The Burden and Standard of Proof

3. In a proceeding to restore a disciplined professional license or a petition for penalty relief, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored or be relieved from further requirements of probation. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. A person seeking reinstatement or penalty relief must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (See, *Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.) "Since persons under direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that [an] applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole. [Citation.] Similarly, good conduct generally is expected from someone who has applied for [a license] with, and whose character is under scrutiny by, [the licensing agency]." (*In re Gossage* (2000) 28 Cal.4th 1080, 1099.)

5. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California*, *supra*, 49 Cal.3d at p.1092.)

6. Petitioner has no other disciplinary record, which is a mitigating factor. (See, *Segretti v. State Bar of California* (1976) 15 Cal.3d 878, 888.)

7. Petitioner offered no evidence, rationale or valid reason as to why his petition for early termination of probation should be granted.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition of Won Hyok Bae, M.D. for early termination of his probation is denied.

Date: 9-4-14

A handwritten signature in black ink, appearing to read 'R B DASH', written over a horizontal line.

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings